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09/926,367	06/13/2002	Christian Marzolin	215140US0PCT	9256
22850	7590	09/21/2007	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			ART UNIT	PAPER NUMBER

DATE MAILED: 09/21/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/926,367

Applicant(s)

MARZOLIN ET AL.

Examiner

Alicia Chevalier

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1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 7-24-07 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

See continuation sheet.

Continuation Sheet

Continuation of 4. Note: A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, *which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters*. The current reference to the specification by page and line number does not include all the subject matter defined in independent claim 1. Furthermore, Applicant is reminded that the summary of the claimed subject matter must be referred to by the specification by page and line number not by the claims, original or otherwise. Unless, Applicant is admitting that claimed subjected matter is not in the specification MPEP § 608.01(o).

The following excerpts from the specification are Applicant's current reference to the specification by page and paragraph or line.

The paragraph bridging pages 2 and 3 and the second full paragraph on page 3:

In accordance with the foregoing, the hydrophobic/oleophobic property is assessed quantitatively by measurement of the angle of contact formed more often than not by a drop of water on a given substrate. If there is no further indication, this angle of contact is measured for a horizontal substrate. In reality, as already noted above, it is the behavior of drops of liquid in dynamics which is addressed by the act of imparting a hydrophoby to a substrate. This also holds true for approximately vertical static substrates such as the exterior glazing for the building trade, glazing for showers as well as for transportation vehicles. Now, in the case of a drop of liquid on a substrate inclined in relation to the horizontal, two different angles of contact are seen: the angle of advance and the angle of retreat, determined at the front and at the rear of the drop, respectively, in relation to the direction of its travel. These angles are values attained at the limit of disengagement of the drop. The difference between the angle of advance and the angle of retreat is called hysteresis. A drop of water having a high hysteresis or a small angle of retreat likely would have difficulty in flowing on a substrate. Thus it is easily understood that an effective hydrophoby is conditioned by both a large angle of advance and a low hysteresis.

As a matter of fact, on this level the inventors obtained excellent results, never before achieved. On a hydrophobic substrate in accordance with the invention, an exceptionally smooth and rapid flow of water drops was obtained. Moreover, it has been able to be confirmed that the measures set forth in accordance with the invention also are of such nature as to intensify the hydrophilic aspect of a substrate. One of the consequences thereof is, in certain cases, according to the preceding explanations, that the anti-staining aspect attains a very high level.

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The first full paragraph on page 5:

The height of said high surface level in relation to said low surface level preferably ranges between 0.01 and 10 micrometers.

Page 11, lines 12-13:

The characteristic dimensions of the three reliefs are in the region of a micrometer.

Page 12, lines 3-5:

In comparison with the control constituted by the small flat plate; it is noted that the small plates with reliefs according to the invention in all cases attain a substantial increase in the angle of advance while retaining a hysteresis which is unchanged or changed only slightly.

The following limitations from the independent claim 1 that are not referred to by the specification page and line are: A hydrophobic/oleophobic substrate, comprising: a relief; wherein said relief consists of a low surface level and a high surface level, said high surface level has a height not less than 1/10 of the dimensions of a plurality of motifs forming said high surface level, wherein said high surface level represents 1 to 65% of a surface of the substrate; wherein said substrate is hydrophobic/oleophobic, and wherein said relief provides an angle of advance of a drop of water greater than such angle provided on a flat substrate. While it is noted that the specification at the paragraph bridging pages 2 and 3 talks about hydrophobic/oleophobic properties, it does not state that the substrate of the invention is hydrophobic/oleophobic.

It is recommended that Applicant map the claim elements referring to the specification by page and line number, and to the drawing, if any, by reference characters as follows:

Independent Claim 1:

A hydrophobic/oleophobic substrate (*page 3, lines 20-21*), comprising:

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a relief (*page 3, lines 16-17*);

wherein said relief consists of a low surface level and a high surface level (*page 3, lines 16-17*),

said high surface level has a height not less than 1/10 of the dimensions of a plurality

of motifs forming said high surface level (*page 3, lines 17-18*),

wherein said dimensions are in the region of a micrometer (*page 5, lines 4-5*),

wherein said height ranges between 0.1 and 10 micrometers (*page 5, lines 4-5*),

wherein said high surface level represents 1 to 65% of a surface of the substrate (*page 3, lines 18-19*);

wherein said substrate is hydrophobic/oleophobic (*page 3, lines 20-21*), and

wherein said relief provides an angle of advance of a drop of water greater than such

angle provided on a flat substrate, which is otherwise the same as said substrate but without

said relief (*page 11, lines 16-21, see the TABLE*), without substantially changing the hysteresis obtained with the flat substrate (*page 12, lines 3-5*).

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b). ***MPEP § 1205.03 (b)***

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac

9/12/07

Alicia Chevalier
ALICIA CHEVALIER
PRIMARY EXAMINER